

1 BEFORE THE MISSOURI GAMING COMMISSION
STATE OF MISSOURI

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6 Meeting
April 29, 2014
1:00 p.m.
7 Central Office
3417 Knipp Drive
8 Jefferson City, Missouri

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10 (Meeting start time: 1:00 p.m.)

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5 Meeting

6 April 29, 2014

7 1:00 p.m.

8 Central Office

9 3417 Knipp Drive

10 Jefferson City, Missouri

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12 COMMISSIONERS PRESENT:

13 Dr. Barrett Hatches, Chairman

14 Suzanne Bocell Bradley

15 Darryl T. Jones

16 Diane C. Howard

17

18

19 REPORTED BY:

20 Patricia A. Stewart

21 RMR, RPR, CCR 401

22 3432 West Truman Boulevard, Suite 207

23 Jefferson City, Missouri 65109

24 573-636-7551

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P R O C E E D I N G S

EXECUTIVE DIRECTOR STOTTLEMYRE:

Mr. Chairman, we're ready to call the meeting to order.

CHAIRMAN HATCHES: Angie, would you call the roll, please.

MS. FRANKS: Commissioner Howard.

COMMISSIONER HOWARD: Present.

MS. FRANKS: Commissioner Jones.

COMMISSIONER JONES: Present.

MS. FRANKS: Commissioner Bradley.

COMMISSIONER BRADLEY: Present.

MS. FRANKS: Chairman Hatches.

CHAIRMAN HATCHES: Present.

EXECUTIVE DIRECTOR STOTTLEMYRE: We need a motion to go into closed.

CHAIRMAN HATCHES: Chair would entertain a motion.

COMMISSIONER BRADLEY: I'll move to go into a closed meeting under Revised Statutes of Missouri, Chapter 313.847, under investigatory, propriety and application records, and Section 610.021, Subsection 1, legal actions, and Subsection 14, records protected from disclosure by Law.

COMMISSIONER HOWARD: I'll second.

CHAIRMAN HATCHES: Angie, call the roll,

1 please.

2 MS. FRANKS: Commissioner Howard.

3 COMMISSIONER HOWARD: Approve.

4 MS. FRANKS: Commissioner Jones.

5 COMMISSIONER JONES: Approve.

6 MS. FRANKS: Commissioner Bradley.

7 COMMISSIONER BRADLEY: Approve.

8 MS. FRANKS: Chairman Hatches.

9 CHAIRMAN HATCHES: Approve.

10 Okay. We'll go into closed and come back
11 sometime soon.

12 (Closed Meeting.)

13 CHAIRMAN HATCHES: All right. The first
14 order of business is to remind all of you to please turn
15 off your cell phones, and remind you that the reason we
16 do that is because LeAnn really gets bothered over here.
17 So I would never say that. She forces me to do it
18 anyway.

19 No. Really, if you'd turn them off. Thank
20 you.

21 Okay. A motion to go back on?

22 EXECUTIVE DIRECTOR STOTTLEMYRE: Yes, sir.

23 COMMISSIONER BRADLEY: Motion to reopen.

24 COMMISSIONER JONES: Second.

25 CHAIRMAN HATCHES: Angie.

1 MS. FRANKS: Commissioner Howard.

2 COMMISSIONER HOWARD: Approve.

3 MS. FRANKS: Commissioner Jones.

4 COMMISSIONER JONES: Approve.

5 MS. FRANKS: Commissioner Bradley.

6 COMMISSIONER BRADLEY: Approve.

7 MS. FRANKS: Chairman Hatches.

8 CHAIRMAN HATCHES: Approve.

9 Mr. Stottlemire.

10 EXECUTIVE DIRECTOR STOTTLEMYRE: Is it my
11 understanding that the hearing officer will not make a
12 presentation?

13 CHAIRMAN HATCHES: Yes.

14 EXECUTIVE DIRECTOR STOTTLEMYRE: Okay. So
15 the next item on the agenda would be --

16 MR. GREWACH: I'm sorry.

17 I would ask that the counsel on the record
18 indicate whether they agree -- and agree to waive the
19 hearing officer making a presentation to the Commission.

20 CHAIRMAN HATCHES: Okay. I have a statement
21 that will address that, but I think -- are we on?

22 Okay. There was a closed session to discuss
23 procedural matters, and at the conclusion of the closed
24 session all attorneys were present.

25 One procedural matter that was discussed was

1 for the hearing officer to make a presentation on the
2 findings of fact, conclusions of law and final order.

3 All of the attorneys, including Mr. Steib,
4 waived this requirement since the findings of fact,
5 conclusions of law and final order are attached to the
6 proposed resolution.

7 Do you think it's still --

8 MR. GREWACH: If the counsel could indicate
9 on the record whether they agree to waive the
10 presentation by the hearing officer.

11 MR. ELLINGER: Mr. Chairman, members of the
12 Commission, my name is Marc Ellinger, along with Jim
13 Deutsch and Stephanie Bell, from Blitz, Bardgett &
14 Deutsch representing the Applicants, and we do waive the
15 reading of the hearing officer's recommendation.

16 CHAIRMAN HATCHES: Thank you.

17 MS. CHURCHILL: Mr. Chairman, members of the
18 Commission, I'm Patricia Churchill, Assistant Attorney
19 General, representing the Commission, and we also agree
20 to waive the reading.

21 CHAIRMAN HATCHES: Thank you.

22 This afternoon we are taking up Resolution
23 No. 14-014, along with the findings of fact, conclusions
24 of law and final order in the matter of Ainsworth Game
25 Technology, Leonard Hastings Ainsworth and Daniel E.

1 Gladstone for oral arguments by parties as allowed by
2 11 CSR 45-13.070.

3 The purpose of the hearing this afternoon is
4 to consider the proposed Resolution No. 14-014.

5 Now, the attorney for the Applicants will
6 have a total of 15 minutes to present oral arguments.
7 They may divide that time up between the Applicants and
8 their attorneys as they see fit. At the end of their
9 argument the Commissioners may ask questions.

10 Next the Attorney General's Office will have
11 15 minutes to argue the case on behalf of the Missouri
12 Gaming Commission, which again may be followed by
13 questions by the Commissioners.

14 The Applicants will then have five minutes to
15 present rebuttal arguments, which may be followed by
16 questions by the Commissioners.

17 We ask that the parties limit their answers
18 to each question to two minutes. Mr. Stottlemire will
19 be keeping time during the arguments and will give a
20 two-minute warning and will tell you when your time is
21 up.

22 After the argument is concluded the
23 Commission will make a motion to go into closed session
24 in order to deliberate on the case.

25 The Commission may adopt, modify, reject or

1 remand the case back to the hearing officer for further
2 proceedings.

3 We ask that all of the attorneys remain
4 present in the building during the deliberations because
5 we will go back into open session after our
6 deliberations are finished and we will make an
7 announcement on the Commission's position.

8 Questions?

9 We will begin now with arguments from the
10 Applicants.

11 MR. ELLINGER: Thank you, Mr. Chairman,
12 members of the Commission.

13 First of all, my name is Marc Ellinger,
14 again, from the law firm of Blitz, Bardgett & Deutsch
15 here in Jefferson City. My partner Jim Deutsch and
16 associate Stephanie Bell represent the Applicants who
17 are also here in person. I'd like to introduce them
18 also.

19 Mr. Len Ainsworth is the Chairman, CEO of
20 Ainsworth Game Technology, and Mr. Dan Gladstone is the
21 Chief Executive Office of Ainsworth Game Technology.
22 Both of them have traveled here from Australia to be
23 present today.

24 And on behalf of my clients and on behalf of
25 myself and my firm we very much appreciate the

1 opportunity to present these arguments to the
2 Commission.

3 At any time obviously if you have questions,
4 feel free to interrupt or engage me with them or
5 Mr. Gladstone or Mr. Ainsworth at any time.

6 I'd like to start by just a very, very brief
7 history of this case.

8 The applications in this case were filed in
9 2009. Ainsworth Game Technology, and for shortness I
10 tend to refer to that as AGT -- I hope you'll work with
11 me on that -- filed an application for a supplier's
12 license.

13 There were two key license applications that
14 were also filed on behalf of the key persons, Len
15 Ainsworth and Danny Gladstone.

16 Those applications were filed with the Gaming
17 Commission in 2009, and they were assigned to the
18 Highway Patrol for investigation.

19 Unlike any investigation I've ever been
20 involved in, there were no interviews conducted. Len
21 Ainsworth is the key person license applicant, was never
22 interviewed. Danny Gladstone is a key person license
23 applicant, was never interviewed. In fact, no officer,
24 director, employee, member of AGT was ever interviewed
25 by the Missouri Highway Patrol.

1 The Missouri Highway Patrol never visited
2 Australia where AGT is headquartered, never visited
3 Nevada's headquarters of AGT during the course of this
4 entire investigation. There is a Missouri -- or excuse
5 me -- an American affiliate of AGT that has an office in
6 Las Vegas.

7 There was a visit to Nevada made by the
8 investigative staff but it was simply to the Nevada
9 Gaming Control Board to review their files.

10 The only other matter of investigation that
11 was done by the Missouri Highway Patrol -- and if you go
12 through the record -- I'm not going to go through all of
13 it. You all have seen how daunting it is.

14 It is hundreds -- literally hundreds of pages
15 of testimony, I think about 1,800 pages of testimony,
16 2,900 pages of documents, pleadings that probably stack
17 up four or five feet high.

18 If you look through all that record, you'll
19 find that the Highway Patrol pulled the old
20 investigative file of a different company, Aristocrat.

21 And Aristocrat was a company that applied
22 with the Missouri Gaming Commission for a Missouri
23 gaming license in the late '90s after Len Ainsworth was
24 no longer involved, no longer an owner, no longer a
25 member of Aristocrat Gaming.

1 In fact, Len Ainsworth had never applied with
2 Aristocrat Gaming back in 1996, is when the application
3 was filed with the Missouri Gaming Commission, because
4 he been diagnosed with prostate cancer, had been given a
5 short period of time to live and he had divested himself
6 entirely of all ownership in Aristocrat.

7 But I don't want to get into Aristocrat
8 because they're not here and they're not the entity that
9 is up for licensure. Ainsworth Game Technology is and
10 Len and Danny are.

11 I will go back to point out that the Gaming
12 Commission assigned this to the Highway Patrol, and the
13 Highway Patrol did not do an independent investigation.
14 And we'll get back to that in a minute because the
15 investigation they did was they simply looked at old
16 records.

17 They didn't interview any live witnesses.
18 They didn't interview anybody who saw anything, had
19 personal knowledge of anything. They simply looked at
20 old records from a different applicant.

21 There was a preliminary order of denial that
22 you all voted on to deny AGT, Len Ainsworth and Danny
23 Gladstone their licenses and determined that they were
24 unsuitable.

25 We immediately filed an appeal to that, a

1 hearing officer was assigned and that was Mr. Stark,
2 Steve Stark, who I think was a longtime hearing officer
3 for the Gaming Commission.

4 After a lot of discovery and a lot of
5 documentary transactions between ourselves and the
6 Staff's counsel, there was a three-and-a-half-day trial
7 that began in September of 2012.

8 We presented the entirety of our case at that
9 trial. Len Ainsworth personally testified. Danny
10 Gladstone personally testified. Officers, employees and
11 counsel for Ainsworth Game Technology directly testified
12 in person as to matters they had personal knowledge of.

13 They also at that time testified to a number
14 of documents that we put in the record. As I said,
15 there is nearly 3,000 pages of documents.

16 All of the documents that were put in on our
17 behalf were directly sponsored by a witness. They were
18 testified to. No objection was made to the
19 admissibility of those documents, and they were all
20 admitted to the record.

21 Hearing Officer Stark heard that entire case.
22 It was about three -- slightly less than three full days
23 of testimony, a couple nights that went into the evening
24 because we had folks from Australia testifying by phone.

25 The hearing officer was able to judge the

1 credibility of the witnesses. He was able to see them,
2 see their demeanor.

3 On the fourth day of the hearing the staff
4 attempted to put into -- put into evidence some things
5 that they had not produced to us through the course of
6 discovery.

7 After some discussion on the record we
8 adjourned the hearing at that point, and the Applicants
9 filed a motion to compel the production of that
10 document, which was an investigative report that was
11 unredacted. We'd only been produced the redacted
12 version.

13 We also asked for sanctions because it had
14 not been produced to us all of the way up through into
15 the course of trial.

16 After another long round of briefing, a long
17 round of oral arguments, the hearing officer, Mr. Stark,
18 ordered that those documents be produced and actually
19 imposed sanctions against the staff.

20 The hearing officer was then replaced, and we
21 were not given notice of that replacement in advance.
22 We had a trial date scheduled to resume the trial.
23 Mr. Stark didn't communicate to us that he was ill or he
24 was resigning. We were simply told that a new hearing
25 officer had been assigned to the case and that he would

1 contact us shortly and move forward.

2 We asked why, we asked for an explanation,
3 and we were told in no uncertain terms that we're not
4 allowed to find that out, nor were we allowed to ask or
5 inquire. So the trial continued with a new hearing
6 officer, Mr. Steib.

7 We restarted that trial at the end of August.
8 Mr. Steib only heard the staff's evidence. Our case had
9 been submitted. We had closed our record. He only
10 heard the staff's evidence.

11 One witness, Sergeant Phil Morrison, who is
12 now Lieutenant Phil Morrison with the Missouri Highway
13 Patrol, he was the entire case for the staff.

14 He had no direct testimony. He had no
15 personal knowledge of any of the allegations against
16 Mr. Gladstone, against Mr. Ainsworth. All of his
17 testimony was hearsay. All of the documents that were
18 entered into evidence to support any of the allegations
19 against Mr. Gladstone or Mr. Ainsworth were hearsay and
20 they were all objected to.

21 And I think that's critically important
22 because the Missouri Constitution addresses the standard
23 of evidence in these types of cases, and it expressly
24 says in Article 5, Section 18, that the record must have
25 competent and substantial evidence.

1 And the Missouri Supreme Court has held time
2 and time and time again, and we've cited it in our brief
3 and we cited it in our proposed findings of fact and
4 we've cited it in our objections, that hearsay is not
5 competent and substantial evidence if it's objected to,
6 and we did object to it.

7 So Mr. Steib heard the staff's testimony, all
8 which of was objected to. He did not hear the
9 Petitioners' evidence. He issued a recommendation, and
10 we waived his reading of the recommendation. Obviously
11 you all have had the opportunity to read it.

12 You will notice that in a six-day trial in
13 which the majority of the trial was put on by the
14 Applicants, the majority of the testimony was by the
15 Applicants, the vast majority of the documentary
16 evidence was by the Applicants, there is only one line,
17 one citation to one sentence in the entire
18 recommendation that relates to the testimony or the
19 evidence presented by the Applicants.

20 And that is one sentence pulled out of an
21 exhibit that was put on by the Applicants that was not
22 in relation to the count in which the citation was
23 referred to.

24 I'm not going to go again through the full
25 record. I'd like to kind of get into the counts because

1 I know my time is running very quickly here.

2 There were seven counts that dealt with
3 Leonard Hastings Ainsworth. Those are Counts 3, 4, 6, 7
4 8, 9 and 10. Every one of those counts is more than
5 30 years old.

6 Leonard Hastings Ainsworth testified
7 extensively as to the facts in every single one of those
8 counts. There was no -- and I emphasize that -- no
9 contradicting evidence that was competent and
10 substantial put on to counter one word that Leonard
11 Hastings Ainsworth testified to.

12 There was hearsay but it was objected to, and
13 as we've indicated, the Supreme Court says you can't
14 rely on that. There were no authenticated documents.
15 Records were put in over our objection without having
16 been authenticated.

17 There was no custodian of records who said
18 this is an actual record. There was nobody who said I
19 prepared the record. Records were simply put into
20 evidence over our objection.

21 There were -- these counts that are raised --
22 arose 30 years ago arose out of Australia. The
23 Licensing Court of New South Wales Australia, where all
24 these issues rose, had an extensive hearing and trial
25 many years ago, and they did have direct testimony and

1 they did have direct witnesses testify who had personal
2 knowledge, and the Licensing Court of New South Wales
3 cleared Mr. Ainsworth of every single one of these
4 allegations after hearing real testimony and real
5 evidence.

6 Those decisions were submitted into the
7 record. In fact, they were certified by the courts of
8 Australia. We didn't want to take any chances. We got
9 an official court certification as to the records.

10 They should be controlling on these seven
11 counts because they're the only court that has ever
12 addressed every single one of these and heard actual
13 testimony. They're not referenced in the
14 recommendation.

15 As I noted earlier, the Highway Patrol
16 investigators went to Nevada and they looked at the
17 Nevada files. Nevada did a full investigation of
18 Mr. Gladstone, Mr. Ainsworth and AGT. All of these
19 issues were in the Nevada investigation.

20 Nevada licensed AGT, Len Ainsworth and Danny
21 Gladstone. And, in fact, Sergeant Morrison -- excuse
22 me -- Lieutenant Morrison in his own notes wrote the
23 following. And we've quoted it but I think it's
24 instructive to hear this. This is what the chief
25 investigator from Nevada wrote that Sergeant Morrison

1 thought was so important that he wrote it verbatim in
2 his notes.

3 After 30 years of LHA, Len Ainsworth,
4 fighting the allegations of wrongdoing, his reputation
5 was damaged. He was forced to relinquish control of the
6 company he built from the ground up, Aristocrat, and in
7 the end there were never any criminal convictions or
8 legal documentation to prove any of the allegations
9 against Len Ainsworth. In 2009 Nevada licensed AGT, Len
10 Ainsworth and Danny Gladstone.

11 There were two counts that involved Colorado
12 and Missouri, and I call those the Colorado and Missouri
13 counts because that's really what they arose out of.

14 They don't arise out of anything that had to
15 do with Mr. Ainsworth or AGT. They arise out of things
16 that occurred with Aristocrat.

17 As I noted before, Mr. Ainsworth, AGT,
18 Mr. Gladstone were never applicants in Colorado or in
19 Missouri prior to the application that is in front of
20 you today.

21 Len Ainsworth left Aristocrat in 1994.
22 Aristocrat filed an application with Missouri in 1996,
23 two years after he left. Missouri raised some issues
24 with Aristocrat. Aristocrat did what any smart business
25 person would do. They cut a deal.

1 They agreed they would never talk to Len
2 Ainsworth in return for getting a license. They entered
3 into an affidavit to that effect, saying we promise we
4 will not talk to Len Ainsworth.

5 Nobody told Len Ainsworth this. The Gaming
6 Commission, as you all very well know after you --

7 EXECUTIVE DIRECTOR STOTTLEMYRE: Two minutes.

8 MR. ELLINGER: Thank you.

9 -- after you issued a resolution, you had
10 sent certified mail that resolution. None was ever sent
11 to Mr. Ainsworth. He never had knowledge of it.

12 The same thing happened in Colorado, almost
13 exactly the same thing. Mr. Ainsworth fought it and he
14 prevailed in the courts of Colorado, and Colorado
15 withdrew everything related to Mr. Ainsworth.

16 As my time is running short, I would like to
17 touch on a couple other things very quickly.

18 There were two counts that related to
19 Mr. Gladstone, Counts 5 and 12, that dealt with gaming
20 offenses in New South Wales more than 30 years ago.

21 The Highway Patrol, the staff's witness, said
22 these are basically infractions. They were expunged as
23 a matter of law in Australia ten years after they
24 happened. They happened in the mid '80s -- or excuse
25 me -- early '80s. They were expunged ten years later.

1 That's 20 years ago they've been expunged.
2 He reported them. They should not be held against him
3 in light of the whole man. He's recognized with many
4 awards, honors, recognitions across the nation, across
5 Australia. He's even saved lives as a lifeguard.

6 There is even an error in the recommendation.
7 We cited that in our objections, that everybody agreed
8 there was a mistake in the original Order, and it's
9 restated again in the hearing officer's recommendation.

10 There was never a finding of any denial or
11 unsuitability with respect to Mr. Gladstone in Oregon as
12 Count 12. It simply didn't exist.

13 Finally there's Count 1 that deals with the
14 production of documents, and as I know my time is very
15 short, I will say that a number of litigation files were
16 requested going back in the '70s and early '80s, I think
17 a couple from the very early '90s.

18 AGT left no stone unturned to find those
19 documents. They went to their counsel. They no longer
20 retained them. It was 30 years ago. They went to the
21 Australian courts, and unlike American courts, Missouri
22 courts, which I'm used to, they don't retain those
23 records. They even certified that they didn't exist
24 anymore.

25 We couldn't produce what we couldn't produce.

1 EXECUTIVE DIRECTOR STOTTLEMYRE: It's time.

2 MR. ELLINGER: Thank you.

3 I'd ask that you all adopt our findings of
4 fact, conclusions of law and license AGT, Mr. Ainsworth,
5 Mr. Gladstone.

6 I'd be happy to answer any questions.

7 CHAIRMAN HATCHES: Thank you.

8 Any questions from the Commissioners?

9 Thank you.

10 MR. ELLINGER: Thank you very much for your
11 time.

12 CHAIRMAN HATCHES: Now we will hear arguments
13 from the Attorney General's Office.

14 MS. CHURCHILL: Good afternoon, Chairman
15 Hatches and members of the Commission. My name is
16 Patricia Churchill and I'm here on behalf of the
17 Commission today.

18 I wanted to start out by just -- with the
19 concept that a gaming license is a privilege. It's not
20 a right. Licensed gaming is a matter that is reserved
21 to the states within the meaning of the Tenth Amendment
22 of the United States Constitution and the states can
23 decide where -- each state can decide for itself how and
24 when to allow gaming and how to regulate it.

25 And the burden is on the Applicant to prove

1 their suitability, and they must prove that suitability
2 by clear and convincing evidence.

3 Mr. Ellinger made reference to and used
4 actually the same word I planned to use about this
5 record. It's daunting. I found it daunting to go
6 through it. The sheer volume could be overwhelming.

7 I kept the exhibit boxes in an office down
8 the hall and would go get one at a time when I needed it
9 so I wouldn't be overwhelmed by the number of boxes.

10 So I wanted to provide a little context today
11 in light of that large record, and the first is in the
12 context of who bears the burden of proof.

13 The burden of proof, suitability, lies with
14 the Applicants, and they must prove their suitability to
15 you by clear and convincing evidence.

16 The Court of Appeals in Teague, which is an
17 earlier gaming license denial case, put it this way:
18 The Commission bears no burden to demonstrate that an
19 applicant is suitable. The burden is entirely the
20 applicant's to prove suitability for licensure.

21 And the Petitioners mention that there were
22 no interviews, personal interviews, conducted. Well, in
23 part this is the Petitioners, the Applicants, burden to
24 prove. It's their burden to bring forward.

25 The court in Teague also said an applicant

1 can prove suitability only by fully and completely
2 providing all of the information requested on the
3 application.

4 The second context I'd like you to consider
5 and keep in mind is the standard of proof.

6 The Petitioners must prove their suitability
7 by clear and convincing evidence. The clear and
8 convincing standard has been addressed many times over
9 the years.

10 One of the cases puts it like this. This is
11 the case of Farnsworth. I have copies if you are
12 interested in some light reading when you retire to
13 deliberate.

14 But the clear and convincing standard refers
15 to evidence that instantly tilts the scales in the
16 affirmative when weighed against evidence in opposition
17 and the fact finder's mind is left with an abiding
18 conviction that the evidence is true.

19 This is a significantly higher standard than
20 a preponderance of the evidence. It cannot simply be a
21 little more likely than not. It must immediately tip
22 the scales and leave you with an abiding conviction as
23 to their suitability.

24 The final context that I ask you to remember
25 today is that of the history of gaming in Missouri.

1 The court in Teague described it this way.

2 Excuse me. It wasn't Teague. It was Pen-Yan.

3 Gambling has historically been a crime in
4 Missouri, Article III, Section 39(9). In fact, the
5 Missouri Constitution prohibits games of chance.
6 Chapter 572 of the Revised Statutes criminalizes illegal
7 gambling activities.

8 But Chapter 572 specifically excludes
9 licensed activities by the Missouri Gaming Commission.
10 So what would otherwise be a criminal activity is
11 rendered lawful by the granting of a license by the
12 Commission.

13 The court said this -- and I'll try to do a
14 direct quote -- in easing the total criminal prohibition
15 against gambling in Missouri and to ensure that there
16 the remaining restraints on this otherwise criminal
17 activity are not violated, the State is necessarily
18 concerned that riverboat gaming operations within its
19 borders be strictly monitored and regulated.

20 Moreover, this concern is heightened in light
21 of a legitimate concern that a riverboat gaming license
22 in the state will fall pray to corruption and will
23 attract related criminal activity.

24 This then, the court said, is the evil that
25 the Commission seeks to cure, and they were referring to

1 in the regulation of licensed gaming activities.

2 Petitioners made a lot of the fact that
3 they're licensed in other jurisdictions and that other
4 jurisdictions have looked at some of these facts and
5 found that they were suitable for licensure.

6 But as I mentioned in the beginning, this
7 is -- the licensing of gaming activities is something
8 that is reserved to the states, and each state can
9 choose what standards it chooses to license entities by.

10 It made me think a little bit of -- it's a
11 little hokey but I'm going to go with it.

12 Woodworking 101 is you don't use Board
13 No. 2 to cut Board No. 3 to cut Board No. 4. If you
14 just look to what the last cut was, by the time you get
15 to your final cut, you will be very far off your mark.

16 We can't just look to what other gaming
17 commissions did. So it's not enough to do that, and the
18 fact that a person may be licensed elsewhere is not
19 clear and convincing evidence of their suitability for
20 licensure in Missouri.

21 In the interest of time -- there is one other
22 thing. Mr. Ellinger mentioned in his remarks that all
23 hearsay testimony was objected to, and I wanted to point
24 out that not all evidence was objected to, in particular
25 Exhibits N1 through N6 were the unredacted report.

1 Those came in without objection by the attorneys for the
2 Applicants. So there are things like that.

3 There are some things that I'll cover here,
4 if I have time to get to them, on a few of the articles
5 that are also not hearsay, that are substantial and
6 competent evidence that you can rely on as you make your
7 decision about suitability.

8 The first article is Article 1. That's
9 related to Question 34, the disclosure of litigation
10 that the Applicants are involved in or have been
11 involved in.

12 And the question asks if you've ever been
13 involved in a lawsuit either as a Plaintiff or a
14 Defendant, and they list matrimonial matters, car
15 accidents. It wants everything.

16 And then it says in bold letters, please
17 provide a copy of all documentation in any of the above
18 matters. It also says, yes, if you've been involved in
19 litigation, please complete the following chart.

20 So if you read this question, you can tell
21 that the Applicant is to provide two things if they've
22 been involved in litigation. The first is the list of
23 all of the lawsuits and the second, which is requested
24 in bold print, is a copy of all of the documentation.

25 So this question requires Petitioners to

1 provide documentation for all of the listed cases. They
2 didn't.

3 In their post-hearing brief the Petitioners
4 themselves tell you that they didn't provide a copy of
5 all that documentation but instead they provided a list
6 of cases.

7 Even at that, the list doesn't include quite
8 everything that is on the Question 34. There weren't
9 addresses provided to the court. There were a few
10 instances that the dates weren't fully set forth.

11 But it was an extensive list and I'll give
12 them that. It was 266 cases. So subsequent to
13 submitting this list of 266 cases, Sergeant Morrison did
14 request some specific court records. He asked for all
15 court records regarding 21 of the 266 cases. That's
16 less than 8 percent of all of those cases.

17 AGT provided some documentation, though they
18 concede that in at least one instance they inadvertently
19 omitted 100 pages, roughly 100 pages.

20 AGT in their objections attempts to shift the
21 blame -- or excuse me -- shift the burden to the
22 Commission, complaining that the Commission didn't
23 contact them to inform them that there were missing
24 pages.

25 This is where I want to bring you back to

1 what the court said in Teague. The Commission doesn't
2 bear the burden to prove the Applicant is suitable. The
3 burden is the Applicant, and they can do that by
4 providing full and complete information that's been
5 requested.

6 So in not fully and completely providing all
7 that information, they've failed to instantly tip the
8 scales and they don't leave us with an abiding
9 confidence as to their suitability.

10 The next article I would refer to is
11 Article 5, which relates to Mr. Gladstone's disclosure
12 in his application of one driving under the influence
13 conviction. For gaming-related convictions I believe
14 there were three premises betting, of one telephone
15 betting, and I'll stay away from the dates because I
16 don't have those in my notes.

17 The Petitioners contend that as infractions
18 these gaming-related convictions should not be
19 considered, yet the Gaming Commission's regs allow for
20 the Commission to consider any criminal record,
21 including even an ordinance violation.

22 The statutes and regs also allow the
23 Commission to consider an Applicant if an Applicant has
24 employed a person with a police record. The petition
25 also argues that because the convictions are spent under

1 Australian law, they shouldn't be considered. That
2 ignores the language really in Question 28 itself which
3 requests disposition information, including specifically
4 whether the Applicant has been pardoned.

5 If the Commission has an interest in knowing
6 if someone has been pardoned or something, they are
7 surely interested in knowing if the matter has been
8 spent under Australian law, and Mr. Gladstone disclosed
9 those.

10 In Missouri, even if the conviction is
11 expunged or otherwise closed, it's available to law
12 enforcement agencies and agencies like the Gaming
13 Commission who are issuing a license.

14 Under 610.120 of the Revised Statutes, law
15 enforcement records are closed and inaccessible like --
16 that are closed are inaccessible to the public but
17 they're available to law enforcement agencies for
18 issuing a license.

19 Under 610.140.8 of the statutes a person is
20 specifically required to disclose an expunged conviction
21 if they apply for a license under Chapter 313, the
22 gaming chapter.

23 So the evidence shows that Mr. Gladstone had
24 a police record and engaged in behavior that resulted in
25 gaming-related convictions.

1 The Commission may consider this a
2 substantial and competent evidence that this background
3 would adversely affect the public confidence and trust
4 in gaming.

5 And the last article that I'd like to get to
6 is Article 12, which relates to AGT's license denial in
7 Oregon due to Mr. Gladstone's convictions.

8 Evidence in the record shows that the Oregon
9 State Police concluded in 2008, based on Mr. Gladstone's
10 convictions, that AGT is, quote, not suitable.

11 Those were the words that they used to enter
12 into contracts with four Oregon tribes, and that's in
13 Commission Exhibit ZZ and Petitioners' Exhibit 11.
14 They're the same.

15 The Petitioners' witness testified that AGT
16 took umbrage at the use of that term and worked with the
17 powers that be to try to change that language.

18 Petitioners also point out the 2008 letters
19 were eventually replaced with new letters in 2010 with
20 language that apparently was more palatable to them.

21 They also argued that Oregon tribes make no
22 suitability determination.

23 I would refer you to Commission Exhibit AAA,
24 which was admitted without objection, and in that 2011
25 letter Sergeant Dodd with the Oregon State Police

1 explained that the respective Tribal Gaming Commission
2 issued the license but the Oregon State Police perform
3 background investigations of gaming vendors and their
4 key persons to determine if the vendors are suitable.
5 Those are the words of the Oregon State Police.

6 And based on the review that Sergeant Dodd
7 concluded that AGT did not meet the criteria for four
8 Oregon tribes. So they have failed to meet their burden
9 and are subject denial under the provisions that we
10 cited in our post-hearing brief.

11 I mentioned Exhibits N1 through N6 and I -- I
12 am not positive because I didn't live through the
13 hearing as my colleagues here, but I think that the
14 reference to the Nevada Gaming Control Board about the
15 30 years, was that from Exhibit N, do you recall?

16 MR. ELLINGER: (Nods head.)

17 EXECUTIVE DIRECTOR STOTTLEMYRE: Two minutes.

18 MS. CHURCHILL: So I just wanted to reiterate
19 to you that in addition to the ones I mentioned with the
20 individual counts, I did not make a reference to the
21 material in Exhibits N1 through N6 but that is
22 something.

23 So just to wrap it back up, I want to bring
24 it back to who has the burden. The Petitioners have the
25 burden. It's their burden to prove to you their

1 suitability by clear and convincing evidence.

2 So when you weigh the evidence, the evidence
3 that shows their suitability must instantly tilt those
4 scales and leave you with that abiding conviction that
5 they are suitable.

6 We ask that you adopt the hearing officer's
7 findings of fact and conclusions of law and deny the
8 license to the Applicants.

9 CHAIRMAN HATCHES: Thank you.

10 MS. CHURCHILL: Questions?

11 CHAIRMAN HATCHES: Do the Commissioners have
12 any questions?

13 Next we will have rebuttal on behalf of the
14 Applicant.

15 MR. ELLINGER: Thank you, Mr. Chairman,
16 members of the Commission.

17 I will agree with Ms. Churchill that the
18 burden of proof does fall upon the Applicants. We know
19 that. We've all practiced gaming long enough to know
20 that the burden of proof is on the Applicants.

21 It is a clear and convincing standard, the
22 statutes and regulations say that, but to look at what
23 clear and convincing evidence means, she -- my opponent
24 indicated in a very nice quote, let's talk about tilting
25 the scale.

1 The key part of the citation that she gave
2 you was not it shocks you into saying they're
3 convincing. It is after weighing all of the evidence
4 put on by one side against the evidence put on against
5 it you come to that conclusion.

6 The only direct evidence in this case was put
7 on by the Applicants. Len Ainsworth testified. Danny
8 Gladstone testified. Nobody from Australia came to
9 testify to counter any of those allegations.

10 You're supposed to weigh it against the other
11 evidence, and the fact of the matter is there really
12 isn't other evidence in this case.

13 Staff makes light of Exhibit N, and it's
14 interesting that Exhibit N becomes the exhibit that they
15 talk about. That was the one that was concealed. That
16 was the one that was not produced in discovery. That
17 was the one that was the subject of sanctions, because
18 the original language that was given to us was
19 Exhibit M.

20 Exhibit M didn't contain that language from
21 the Nevada investigator. It didn't contain a lot of
22 things that were exculpatory evidence, is ultimately why
23 the sanctions were imposed.

24 So you look at the whole person. You look at
25 the whole company. You look at Len Ainsworth. You look

1 at Danny Gladstone.

2 Len Ainsworth was inducted into the Gaming
3 Hall of Fame in the United States and Australia. He
4 received more awards and recognitions than I can
5 literally spout off in my five minutes that I have up
6 here, Manager Hall of Fame, Manager -- club Managers of
7 the year. They received licenses in numerous states,
8 all sorts of foreign jurisdictions. I mean, Danny
9 Gladstone literally even saved lives. You have to look
10 at all that in the entirety of evidence.

11 The evidence that is in the record proves far
12 beyond clear and convincing standard, practically a
13 criminal standard, beyond a reasonable doubt, that Len
14 Ainsworth, Danny Gladstone and Ainsworth Game Technology
15 are suitable.

16 They're upstanding members of the gaming
17 industry. AGT is traded on the Australian Stock
18 Exchange on the big board on the top 200 companies.
19 These are mature gaming markets, mature gaming industry,
20 and people that are vetted by everybody and every single
21 time they've received licenses.

22 You know, I think the staff's comment is
23 interesting that you can't just look at what other
24 jurisdictions have done, and yet that's what the
25 investigation consisted of, just looking at what other

1 jurisdictions did.

2 They never interviewed anyone. They never
3 tried to find the actual answer to any of the questions.
4 They raised allegations. We rebutted them.

5 EXECUTIVE DIRECTOR STOTTLEMYRE: Two minutes.

6 MR. ELLINGER: Not only did we rebut them, we
7 showed all of the evidence to show that there was no
8 support for those allegations.

9 We even put in certified court records that
10 showed that these allegations were found to be
11 meaningless.

12 You look at the Teague case, which staff
13 relies upon, and you have a lot of familiarity with the
14 Teague case.

15 The key part of the Teague case, and that
16 dealt with the production of documents. In Teague,
17 Mr. Teague did not disclose an arrest for -- I believe
18 it was a drug offense, and the courts said that is
19 material. That is a material issue you did not
20 disclose.

21 When you go to every court in Australia and
22 try to obtain court records, you cannot produce those
23 court records. When you go to your lawyer and ask for a
24 file and they tell you we've shredded the file, you
25 cannot produce those records. That's not a material

1 violation.

2 The amount of time, effort, money that goes
3 into trying to just produce one piece of paper that was
4 unavailable was astronomical.

5 In fact, we had direct testimony by
6 Mr. Dennis Vauran, who is Australian counsel, as to the
7 efforts that they took, including sending lawyers to the
8 courts to dig through files, still couldn't find them.

9 Finally, the staff talked about Oregon, and I
10 think Oregon is instructive because there was a letter
11 issued by the State police that said they were not --
12 that Mr. Gladstone was not suitable. It was withdrawn.

13 The staff has the other letter. It's in
14 evidence. And it specifically says we withdraw the
15 other letter. It was not correct. There was no
16 determination of nonsuitability.

17 By the way, there was never a denial. That's
18 undisputed. The word "denial" does not exist anywhere.
19 It never occurred. And that's a unique term. Never
20 anywhere does that exist.

21 Oregon withdrew that. Oregon sent a letter
22 to the tribe saying if you have certain --

23 EXECUTIVE DIRECTOR STOTTLEMYRE: Time.

24 MR. ELLINGER: May I finish that one comment,
25 Mr. Chairman?

1 CHAIRMAN HATCHES: Go ahead.

2 MR. ELLINGER: Oregon sent a letter to the
3 tribe saying if you have Missouri-type language, look at
4 the whole totality of the person's record. You can do
5 business with them. Every tribe with that compact
6 language, everyone is doing business with AGT.

7 Again, we'd ask that you find them suitable.
8 I'd be happy to answer any questions

9 CHAIRMAN HATCHES: Any questions from the
10 Commissioners?

11 Thank you.

12 MR. ELLINGER: Thank you very much.

13 CHAIRMAN HATCHES: Okay. The Chair would
14 entertain a motion to go into closed session.

15 COMMISSIONER BRADLEY: I'll make a motion
16 to go into closed session under Section 313.847,
17 Revised Statutes of Missouri, covering investigatory,
18 proprietary and application records, and
19 Section 610.021, Subsection 1, concerning legal actions,
20 and Subsection 14, Missouri records protected from
21 disclosure by law.

22 COMMISSIONER JONES: Second.

23 CHAIRMAN HATCHES: Moved and seconded.

24 Angie, would you call the roll, please.

25 MS. FRANKS: Commissioner Howard.

1 COMMISSIONER HOWARD: Approve.

2 MS. FRANKS: Commissioner Jones.

3 COMMISSIONER JONES: Approve.

4 MS. FRANKS: Commissioner Bradley.

5 COMMISSIONER BRADLEY: Approve.

6 MS. FRANKS: Chairman Hatches.

7 CHAIRMAN HATCHES: Approve.

8 Thank you. We're going into closed session.

9 (Closed meeting.)

10 CHAIRMAN HATCHES: Chair would entertain a

11 motion to go back into open session.

12 COMMISSIONER BRADLEY: So moved.

13 COMMISSIONER JONES: Second.

14 CHAIRMAN HATCHES: Angie, would you call the

15 roll, please.

16 MS. FRANKS: Commissioner Howard.

17 COMMISSIONER HOWARD: Approve.

18 MS. FRANKS: Commissioner Jones.

19 COMMISSIONER JONES: Approve.

20 MS. FRANKS: Commissioner Bradley.

21 COMMISSIONER BRADLEY: Approve.

22 MS. FRANKS: Chairman Hatches.

23 CHAIRMAN HATCHES: Approve.

24 And you didn't even have to tell me.

25 Commissioner Jones was on top of it.

1 Before we move any further I would like to
2 take just a minute to say a special thank you to the
3 Commission for their hard work and deliberation.

4 This was a tough process for us. This is one
5 of the -- certainly one of I'll say the biggest deals
6 we've worked on. They all have their value but this one
7 has been really tough, and I certainly appreciate the
8 Commissioners in their deliberation. It means a lot.
9 And we are certainly a good team of independent thinkers
10 and that too stretches the conversation.

11 So again, thank you so much for staying here
12 tonight and doing this.

13 And we wanted to be able to at least get to a
14 point where we could make a decision tonight rather than
15 stop and start again tomorrow. So I appreciate your
16 patience, too, in coming and going.

17 And with that the Chair will now entertain a
18 motion on the resolution.

19 COMMISSIONER HOWARD: I think I drew the
20 short straw, didn't I, sir?

21 CHAIRMAN HATCHES: I don't remember.

22 COMMISSIONER HOWARD: I'll make the motion.

23 I think we're in a position to be able to do
24 this in the matter of Ainsworth Game Technology and
25 Leonard Hastings Ainsworth and Daniel Gladstone, the

1 Missouri Gaming Commission Resolution No. 14-014.

2 Whereas, Ainsworth Game Technology, Leonard
3 Hastings Ainsworth and Daniel Gladstone requested a
4 hearing to contest the denial of their application for a
5 supplier's licensure and key person's licensure by
6 virtue of the Commission's resolution denying said
7 application on September 28, 2011, Resolution
8 No. 11-069, and whereas pursuant to 11 CSR 45-13.010,
9 et. sequel, an administrative hearing has been held on
10 the Applicants' request and the hearing officer has
11 submitted the proposed findings of fact, conclusions of
12 law and final order attached hereto, collectively the
13 final order for approval by the Commission, and now
14 therefore be it resolved that the Commission has
15 reviewed the final order and hereby rejects the attached
16 final order in the matter of Ainsworth Game Technology,
17 Leonard Hastings Ainsworth and Daniel Gladstone and does
18 hereby grant their application for licensure, and be it
19 further resolved that this shall be considered a final
20 decision of the Missouri Gaming Commission, that stated
21 April 29th, 2014.

22 COMMISSIONER BRADLEY: I second the motion.

23 CHAIRMAN HATCHES: Angie, call the roll,
24 please.

25 MS. FRANKS: Commissioner Howard.

1 COMMISSIONER HOWARD: Approve.

2 MS. FRANKS: Commissioner Jones.

3 COMMISSIONER JONES: Approve.

4 MS. FRANKS: Commissioner Bradley.

5 COMMISSIONER BRADLEY: Approve.

6 MS. FRANKS: Chairman Hatches.

7 CHAIRMAN HATCHES: Approve.

8 MS. FRANKS: By your vote you've adopted
9 Resolution No. 14-014.

10 CHAIRMAN HATCHES: Hearing no other business,
11 the Chair would entertain a motion for adjournment.

12 COMMISSIONER BRADLEY: Motion to adjourn.

13 COMMISSIONER JONES: Second.

14 CHAIRMAN HATCHES: Angie, call the roll,
15 please.

16 MS. FRANKS: Commissioner Howard.

17 COMMISSIONER HOWARD: Approve.

18 MS. FRANKS: Commissioner Jones.

19 COMMISSIONER JONES: Approve.

20 MS. FRANKS: Commissioner Bradley.

21 COMMISSIONER BRADLEY: Approve.

22 MS. FRANKS: Chairman Hatches.

23 CHAIRMAN HATCHES: Approve.

24 We're done. Thank you.

25 WHEREIN, the meeting concluded at 7:50 p.m.

1 CERTIFICATE OF REPORTER

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I, Patricia A. Stewart, RMR, RPR, CCR, a

Certified Court Reporter in the State of Missouri, do

hereby certify that the testimony that appears in the

foregoing transcript was taken by me to the best of my

ability and thereafter reduced to typewriting by me;

that I am neither counsel for, related to, nor employed

by any of the parties to the action in which this

hearing was taken, and further that I am not a relative

or employee of any attorney or counsel employed by the

parties thereto, nor financially or otherwise interested

in the outcome of the action.

Patricia A. Stewart

CCR No. 401